THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.Nos.24761 of 2002 and 20597 of 2005

COMMON ORDER:

In these two Writ Petitions, common questions of law and fact arise for consideration; therefore, they are being disposed of by this common Order.

Before going into the merits, it is necessary to trace out the history of the cases. According to the petitioner, he was assigned land to an extent of Ac.5.00 cts in R.S.No.62/4 of Rushikonda village, Visakhapatnam Rural Mandal, Visakhapatnam district in the year 1979 under a D-Form Patta, as he was a 'service Soldier'. Since then, he has been in possession and enjoyment of the land by raising Coconut, Casurina, Eucalyptus and Palmolien trees. He paid land revenue upto 1391 Fasli, but, later, the revenue authorities refused to receive the same on the ground that some third party, namely, Y.V.S.R. Murthy is claiming title over the land before the Settlement Officer under the Estates Abolition Act and the said claim is pending in E.A.T.No.1 of 1985.

It seems, earlier, when the Mandal Revenue Officer, Visakhapatnam Rural Mandal, Visakhapatnam failed to mutate the revenue records in respect of the said land, in favour of the petitioner, he filed Writ Petition No.6002 of 2000 seeking a Mandamus for mutation of his name in the revenue records. The said Writ Petition was disposed of on 25-4-2000 directing the authorities to consider his application for mutation.

In pursuance of the said Order, the Mandal Revenue Officer considered the application of the petitioner and rejected it by an Order dated 16-6-2000 on the ground that in respect of the very same land,

third party claim is still pending before the Joint Collector/Settlement Officer; therefore, his claim for mutation of revenue records cannot be considered. However, when the Mandal Revenue Officer high-handedly demolished his structures without any notice, in the year 2000, he filed Writ Petition No.19275 of 2000 seeking a direction to the Mandal Revenue Officer to restore the demolished structures and for damages. In the said Writ Petition, an interim order was passed on 12-10-2000 not to interfere with the reconstruction and repairs of the structures undertaken by him. Accordingly, he reconstructed the structures and continuing the restaurant business. Ultimately, the said Writ Petition was disposed of on 8-8-2002 saying that no further orders are necessary, in view of the fact that he had reconstructed the structures by virtue of the interim orders.

While the matter stood thus, the Mandal Revenue Officer and the Chairman of Visakhapatnam Urban Development Authority (VUDA) issued notices to the petitioner on 5-12-2002 and 7-12-2002 respectively to remove the structures raised by him on the ground that they fall within Coastal Regulation Zone (CRZ). Challenging the said notices, he filed Writ Petition No.24761 of 2002. By an interim order dated 12-12-2002 the respondents were directed not to dispossess him from the land in R.S.No.62/4 without initiating appropriate proceedings in accordance with law. While that being so, the Mandal Revenue Officer issued a notice under Section 7 of the Land Encroachment Act in respect of the same land. However, he got a legal notice issued on 25-3-2003 calling upon the respondents to withdraw the said notice, as the same is contrary to the impugned notices in Writ Petition No.24761 of 2002. On receipt of the legal notice, the Mandal Revenue Officer kept quiet for a period of two years and did not choose to give any reply to the legal notice nor conducted

any enquiry under the Land Encroachment Act. However, after a lapse of more than two years, the Mandal Revenue Officer, Visakhapatnam Rural Mandal issued notice dated 21-2-2005 directing him to attend Office on 28-2-2005 with original records in respect of the land, without making any reference to the earlier notice issued under the Land Encroachment Act. Accordingly, he appeared before the Mandal Revenue Officer and submitted his representation along with all documents in proof of title. When the Mandal Revenue Officer was threatening him to evict, he got issued a legal notice dated 22-3-2005 informing the latter that he can proceed with the enquiry, but shall not pass any order and if any order is passed, it shall not be executed pending Writ Petition No.24761 of 2002, in view of the interim order dated 12-12-2002. But, the Mandal Revenue Officer, Visakhapatnam Rural, in violation of the interim order of this Court dated 12-4-2004 passed in W.P.M.P.No.31199 of 2002 and W.V.M.P.No.3103 of 2003 in W.P.No.24761 of 2002 made an Order dated 28-5-2005 for demolition of the structures and executed that order partly by demolishing one of the structures, despite the legal notice issued by him appraising that the authorities are not supposed to pass any order in view of the fact that the interim order passed by this Court is in force. When the respondent-Mandal Revenue Officer put seals to his structures on 16-9-2005 pursuant to his Order dated 28-5-2005, the petitioner got issued a legal notice dated 17-9-2005 to remove the seals. But, the Mandal Revenue Officer even after receiving the telegraphic legal notice, high-handedly demolished one of the structures on 17-9-2005. Again, he issued another telegraphic notice dated 26-9-2005 to restore the demolished structure and the action of the Mandal Revenue Officer amounts to contempt of Court. But, the Mandal Revenue Officer neither chosen to give any reply nor restored

the structures. Then, he filed Writ Petition No.20597 of 2005 against the demolition order dated 28-5-2005, which was suspended by this Court on 20-9-2005 in W.P.M.P.No.26280 of 2005. When the officials of Tourism Development Corporation tried to trespass into their land at the instance of the Mandal Revenue Officer, he impleaded the authorities of Tourism Development Corporation and obtained status quo orders against them also. In spite of the fact that the interim order in W.P.M.P.No.26280 of 2005 in Writ Petition No.20597 of 2005 was in force, the respondents demolished one more structure; therefore, he filed C.C.No.1147 of 2005 and the same is pending. It is the contention of the petitioner that the Order dated 28-5-2005 was passed by the Mandal Revenue Officer, Visakhapatnam Rural Mandal without conducting any enquiry, without application of mind and contrary to the revenue records; as such, the same is illegal.

A detailed counter affidavit has been filed by the 1st respondent in Writ Petition No.24761 of 2002 stating *inter alia* that the village Rushikonda is an Estate village governed by Vizianagaram Zamin Estate and taken over under the provisions of the Estates Abolition Act,1948. The survey and settlement operations were conducted and the settlement rates were introduced with effect from 1-7-1959. As per survey and settlement records, there were three sub-divisions under S.No.62 with the notation as S.No.62/1 measuring Ac.15.43 cts classified as 'Gayalyu' (AWD), S.No.62/2 measuring an extent of Ac.0.53 cts earmarked as Temple site due to existence of 'Sivalayam' therein and S.No.62/3 measuring an extent of Ac.1.56 cts classified as 'Gayalyu' (AWD). During March,2000, the petitioner filed a representation before the Mandal Revenue Officer, Visakhapatnam Rural requesting to effect mutation of his name in the revenue records in respect of the land measuring an extent of Ac.5.00 cts in Sy.No.62/4

of Rushikonda village, claiming to have acquired the same through D-Form patta granted in his favour by the then Tahsildar Visakhapatnam under 'Serving Jawan Quota', during the year 1979. While the representation filed by the petitioner is under consideration, he filed Writ Petition No.6002 of 2000 and this Court by an Order dated 25-4-2000 directed the Mandal Revenue Officer to consider his representation filed for effecting mutation of his name in the revenue records. Thereafter, the Mandal Revenue Officer considered the representation of the petitioner with reference to the rule position and material available on record, after giving an opportunity of personal hearing and rejected the same on the ground that only Xerox copy of the D-Form patta was filed by the petitioner and it does not bear the D.R. File Number, Office reference Number etc., petitioner did not take steps for a long time for incorporation of changes when the D-Form patta purported to have been issued in the year 1979, his name was not available in V.A.No.3 to prove his enjoyment, he did not produce any land revenue receipts for the last 18 years to prove his possession, a settlement dispute over the land covered by Sy.Nos.61 and 62 of Rushikonda village is pending before the Joint Collector and Settlement Officer as per the Orders of this Court in Writ Petition No.11075 of 1992 filed by one Y.V.S.R. Murthy and a land grabbing case filed by one Vivekananda against the District Collector and District Forest Officer, Visakhapatnam in L.G.C.No.22 of 2000 is pending in the Special Court, Hyderabad with regard to the said land. Further, when the petitioner raised two structures in the land in question in violation of the provisions of Coastal Regulation Zone notification, the field staff of the Mandal Revenue Office and VUDA have demolished the structures. Aggrieved by the same, the petitioner filed W.P.No.19275 of 2000 and in W.P.M.P.No.24439 of 2000 an

interim order was passed permitting the petitioner to reconstruct and repair the demolished structures. Ultimately, the said Writ Petition was disposed of on 8-8-2002 directing the Mandal Revenue Officer to issue a notice and decide the matter. When a notice was issued in pursuance of the directions of this Court dated 8-8-2002, the petitioner fled another Writ Petition before this Court being W.P.No.24761 of 2002 and this Court by an interim order dated 12-12-2002 directed the respondents to proceed legally for eviction of the petitioner, by issuing a notice. Accordingly, the Mandal Revenue Officer issued a notice under Section 7 of the Land Encroachment Act. Petitioner's Advocate issued reply to the said notice of the Mandal Revenue Officer. Thereafter, the Mandal Revenue Officer passed final orders under Section 6 of the Land Encroachment Act asking the petitioner to remove the structures raised in the land. It is the contention of the respondents that the structures raised by the petitioner are in violation of the provisions of Coastal Regulations Zone and the land in question happened to be Government land and raising of structures by the petitioner was obstructed by the field staff of the Mandal Revenue Office, Visakhapatnam Rural and VUDA. It is the claim of the petitioner that he has acquired the land in question through D-Form Patta granted in his favour by the then Tahsildar, Visakhapatnam under 'Serving Jawan Quota' in the year 1979, but the same is not correct, since he has not filed the original of the alleged D-Form patta and the Xerox copy does not contain the file number, reference number etc., and there is no sub-survey No.62/4 as claimed by the petitioner under D-form patta.

In Writ Petition No.20597 of 2006 a detailed counter affidavit is filed by the 1st respondent stating *inter alia* that the land in Sy.No.62 as per revenue records, was sub-divided into Sy.No.62/1 (Ac.13.87

cts), 62/2 (Ac.0.53 cts) and 62/3 (Ac.1.56 cts) and there is no sub-survey No.62/4 as claimed by the petitioner under D-Form patta said to have been issued by the revenue authorities. The entire land in Sy.No.62/1 is recorded as 'assessed waste dry' in the revenue records and the same is a Government land. As the petitioner had occupied part of the said land unauthorizedly and raised temporary structures, a notice under Section 7 of the Land Encroachment Act was given on 12-3-2003 for removal of the structures. Ultimately, after conducting an enquiry, final Order under Section 6 of the Land Encroachment Act was passed on 28-5-2005 directing eviction of the petitioner from the said land. Thereafter, possession of the land was taken on 16-9-2005 forfeiting temporary constructions existing and the same was handed over to the Tourism Department on 17-9-2005. Further, the contention of the petitioner that he was assigned D-Form patta was verified with revenue records, but the same is not traced and even in the Dharkasth Register maintained by the authorities, there is no such survey number as 62/4. The copy of D-Form patta produced by the petitioner does not even contain any D.R. number or the year. Thus, the patta said to have been obtained by the petitioner is not a genuine one.

Respondents 3 and 4 in Writ Petition No.20597 of 2005 also filed a separate counter affidavit taking the same stand as was taken by the 1st respondent. Further, it is stated that a land of Ac.5.00 in Sy.No.62/1 of Yendada village has been handed over by the Mandal Revenue Officer to the Tourism Development Corporation, which has started Snack Bar activity in the said land and they have been in possession and enjoyment of the said land right from 17-9-2005. However, they have stated that they have not demolished any structures nor caused damage to the petitioner. Further, they have not violated the Orders of

this Court.

When a petition is filed by the petitioner for the purpose of calling for certain original records from the revenue authorities, the Mandal Revenue Officer, Visakhapatnam Rural filed an affidavit stating that the Field Measurement Book (FMB) of Rushikonda village is concerned, on a close scrutiny, it was noticed that the FMB of Rushikonda village in relation to Sy.No.62 showing Sub-Division No.4, is found to be not genuinely maintained document by the revenue and survey authorities and the following aspects would reveal that the said document is a fabricated one and inserted in the place of original FMB prepared at the time of formation of sub-division 3 of Survey No.62.

(a) 8-A Register pertaining to Sy.No.62/3 maintained by Mandal Revenue Office, Visakhapatnam (Rural) shows an entry that the Sy.No.62/3 was incorporated on 22-1-1979 after FMB was prepared and scrutinized by the concerned authorities.

(b) 8-A Register of the Mandal does not give any indication of survey No.62/4 as there is no corresponding entry incorporating the sub-division in the Register.

(c) When the sub-division No.62/3 was incorporated on 22-1-1979 along with other survey numbers, FMB, if any, for Sy.No.62/4 could only be subsequent to incorporation of Sy.No.62/3 on 22-1-1979. However, a reading of fabricated FMB document found in the records would show that the same was prepared and scrutinized even in 1978 itself. Further, the entry made by the Taluk Surveyor with TK No.8A/88/14/89 on 19-2-1979 was verified with 8A Register maintained by the then Taluk Office. The said number 14/89 referred in the endorsement is not related to Rushikonda village, but the same is related to Gurrampalem village (presently Pendurthi Mandal) and the same was incorporated on 20-11-1979.

(d) The signatures of the Deputy Inspector, Survey & Land Records, dt.13-9-1978, the signatures of Tahsildar, Visakhapatnam dt.23-11-1978 and the signatures of Taluk Surveyor dt.19-2-1979 are not tallying with the genuine signatures of the said officers, who have prepared sub-division records in respect of Sy.Nos.7, 29, 37, 38 and 62/3 of Rushikonda village on the very same period.

Further, *prima facie,* various irregularities have been found in the FMB

and a letter has been addressed to the District Collector, Visakhapatnam by the Mandal Revenue Officer, Visakhapatnam (Rural) on 8-7-2006 in this regard. The District Collector, Visakhapatnam is causing enquiry into the matter and the FMB showing Sy.No.62/4 is not a genuine one and the same is fabricated and inserted by the persons making false claim to the Government land and the same requires detailed investigation by the authorities.

Heard both sides and perused the entire material made available on record.

There is no necessity of going into all the details. From the above, it reveals *prima facie* that the petitioner is a D-Form patta holder of the land ad measuring Ac.5.00 in Sy.No.62/4 of Rushikonda village and the FMB shows that sub-division No.4 was available as early as in 1979 and the D-Form patta was issued in the year 1979. Further, the Scrutiny Register also refers to sub-division No.4 of Sy.No.62 of Rushikonda village and against column No.9 thereof, the name of the petitioner was shown and against column No.10 it is stated that the petitioner was a 'Serving Jawan' at the time of preparation of the Register. Such is also the position in 8A Register. Firstly, the respondent-authorities have stated that the sub-division No.4 of Survey No.62 itself was not available and secondly, it falls within the Coastal Regulation Zone. Thereafter, when the petitioner sought for mutation, it was stated that some cases of settlement are pending, in which this land is also being claimed by the third parties; therefore, mutation cannot be done at that stage. The revenue authorities have also stated that Sy.No.62/4 itself does not exist and even if it exists, the entries in FMB Register, Scrutiny Register, 8-A Register and other Registers are all fabricated one. One thing is sure that these entries are available in the revenue records since 1979 onwards. But, it is

interesting to notice that by the impugned notice dated 5-12-2002 itself, the petitioner was directed to remove the structures raised in **Sy.No.62/4** of Rushikonda village on or before 16-12-2002; otherwise, further action will be taken as per Rules.

Sri D.Prakash Reddy, learned senior counsel appearing for the petitioner, has raised a dispute that the impugned final order dated 28-5-2005 is not proper and it cannot be treated that it was issued as per the provisions of Section 6 of the Land Encroachment Act. The said Order was passed only rejecting the application of the petitioner for incorporation of his name in the revenue records and not otherwise. But, there is no necessity of going into this aspect.

Though the petitioner filed D-Form patta, it was not accepted by the Mandal Revenue Officer stating that it is only a Xerox copy and original is not filed, though the petitioner claimed that the original is not available. Thereafter, sub-division number itself is denied, though entries are available in the registers as maintained in the year 1979. Now it is stated that it is a fraud played by somebody at the instance of the petitioner and the same is detected very recently and a letter to this effect has been addressed to the District Collector, Visakhapatnam by the Mandal Revenue Officer, Visakhapatnam Rural on 8-7-2006. This all shows that the whole case requires a detailed probe to find out whether D-Form patta claimed to have been issued in favour of the petitioner was true and correct, whether the entries made in FMB Register, Scrutiny Register and 8-A Registers are all fabricated and if fabricated, who has done the same, whether the petitioner has accrued any rights under the D-Form patta and whether the same is required to be cancelled. Till date, D-Form patta is not cancelled. Without conducting a detailed enquiry into the matter and coming to the conclusion that no patta has been issued and the entries made in the

revenue records are fabricated, it cannot be said that the land in question does not belong to the petitioner. Therefore, the notices issued by the respondents and the final orders passed under Section 6 of the Land Encroachment Act are not tenable. In a serious matter like this, by invoking the summary proceedings, the respondents ought not to have passed orders of eviction under the provisions of the Land Encroachment Act. The respondents have invented a short cut method to oust the petitioner from the land, without conducting a detailed enquiry into the matter.

In the above circumstances, I am of the opinion that the impugned notices issued and final orders passed by the respondents are liable to be set aside and are accordingly set aside leaving it open to the respondents to probe into the matter in detail and pass appropriate orders as to the genuineness of D-Form patta and the entries made in the registers and then take appropriate action against the petitioner, if necessary. Till such time, the possession of the petitioner over the land in Sy.No.62/4 of Rushikonda village shall not be disturbed. It is desirable that the District Collector, Visakhapatnam shall appoint a competent person not below the rank of a Revenue Divisional Officer for conducting a detailed enquiry into the matter.

The Writ Petitions are allowed to the extent indicated above. No order as to costs.

19-9-2006

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